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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. [redacted]

M.F.A. CENTRAL COOPERATIVE, *Petitioner*

v.

EDWIN O. ~~BOOKWALTER~~, District Director of Internal Revenue

M.F.A. OIL COMPANY, *Petitioner*

v.

UNITED STATES OF AMERICA

MISSOURI FARMERS ASSOCIATION, INC., *Petitioner*

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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M.F.A. Central Cooperative, M.F.A. Oil Company, and Missouri Farmers Association, Inc. petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in the above-entitled cases.[1]

[1] The Eighth Circuit rendered one opinion in five consolidated cases (Nos. 19,527-19,531) brought by these three petitioners pursuant to a stipulation of the parties that the resolution of *M.F.A. Central Cooperative* v. *Bookwalter* (No. 19,527) would control the outcome of the other four cases. Although this petition covers all five cases, we shall, for purposes of convenience, refer herein only to M.F.A. Central Cooperative.

OPINIONS BELOW

The memorandum opinion of the United States District Court for the Eastern District of Missouri (Appendix C, *infra*, pp. 9a-20a) is reported at 286 F. Supp. 956. The opinion of the United States Court of Appeals for the Eighth Circuit (Appendix A, *infra*, pp. 1a-6a) is not yet officially reported.

JURISDICTION

The Judgment of the Court of Appeals (Appendix B, *infra*, pp. 7a-8a) was entered on June 8, 1970. A timely petition for rehearing was denied on July 23, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Pursuant to 12 U.S.C. § 1134d(a)(3), and the terms of its loan agreement with the St. Louis Bank for Cooperatives, M.F.A. Central Cooperative, in order to obtain loans from that Bank, was required to agree to purchase, during each year in which such loans were outstanding, Class "C" stock of the Bank, at its par value of $100 per share, in an amount equal to 15% of petitioner's quarterly interest payments to the Bank during such year.

The question presented is whether petitioner is entitled to deduct, as an ordinary and necessary business expense or as interest, the amounts by which such required payments exceeded the fair market value of Class "C" stock so acquired.

STATUTES INVOLVED

Internal Revenue Code of 1954, section 162(a):

> "*In General.*—There shall be allowed as a deduction all the ordinary and necessary expenses

paid during the taxable year in carrying on any trade or business. . . ."

Internal Revenue Code of 1954, section 163(a):

"*General Rule.*—There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness."

STATEMENT OF THE CASE

Prior to and during its fiscal years ending August 31, 1958 and August 31, 1959, petitioner, a farmers' cooperative, borrowed substantial sums from the St. Louis Bank for Cooperatives.

Pursuant to 12 U.S.C. § 1134d(a)(3), and the terms of its loan agreements with the St. Louis Bank, petitioner, in order to obtain such loans, was required to agree to purchase during each year in which loans were outstanding Class "C" stock of that Bank, at its par value of $100 per share, in an amount equal to 15% of petitioner's quarterly interest payments to the Bank during such year. During its 1958 and 1959 fiscal years, petitioner, in compliance with these requirements, made the requisite quarterly purchases of Class "C" stock in the aggregate amount of $20,154.32 in 1958 and $27,966.97 in 1959.

The Class "C" stock could pay no dividends. It was redeemable at par in the discretion of the Board of Directors of the Bank, but only after all "senior stock" (Class "A" stock which could be held only by the government, and Class "B" stock which could be held by anyone) and all previously issued Class "C" stock had been retired or called for retirement. The Class "C" stock here involved entitled petitioner to

no voting rights, no right to share in the profits of the Bank, and no other benefits of any kind.[2]

Petitioner brought this suit for a refund of federal income tax, taking the position that amounts expended in 1958 and 1959, purportedly for the Class "C" stock, were in reality, to the extent they exceeded the fair market value of such stock, payments for the use of money, deductible either as interest under Section 163 of the Internal Revenue Code or as ordinary and necessary business expenses under Section 162 of the Internal Revenue Code. The District Director of Internal Revenue had denied such deductions.

The District Court, concluding that the Class "C" stock had no fair market value, held that petitioner was entitled to a deduction under Section 162 of the Internal Revenue Code for the full amounts paid by it in 1958 and 1959. The Court of Appeals reversed.

REASONS FOR GRANTING THE WRIT

The decision of the Eighth Circuit in this case is in direct conflict with the decision of the Court of Claims in *Penn Yan Agway Cooperative, Inc.* v. *United States*, 417 F.2d 1372 (decided Nov. 14, 1969), and the decision of the Fifth Circuit in *Mississippi Chemical Corp.* v. *United States*, —— F.2d ——, 1970-2 U.S.T.C. ¶ 9601 (decided Sept. 14, 1970). In the instant case, the District Court held that petitioner was entitled to deduct as a business expense under Section 162(a) of the Internal Revenue Code (but not as interest) the

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[2] In order to become a borrower from the Bank, petitioner had been required by 12 U.S.C. § 1134d(a)(3) to own a "qualifying share" of Class "C" stock of the Bank. This "qualifying share," the tax treatment of which is not in issue here, entitled petitioner to the single vote granted to each Class "C" stockholder. Petitioner's voting rights were not increased by the acquisition of additional shares.

amounts in excess of the fair market value of the Class "C" stock of the St. Louis Bank for Cooperatives which it was required to pay, ostensibly as the purchase price of such stock, but actually for the right to borrow from that Bank.[3] The Eighth Circuit reversed, holding that amounts paid in excess of the fair market value of Class "C" stock were neither ordinary and necessary business expenses nor interest.

In *Penn Yan Agway Cooperative, Inc.*, and *Mississippi Chemical Corp.*, the Court of Claims and the Fifth Circuit, respectively, held that the taxpayers there involved were entitled to deduct, as interest paid under Section 163(a) of the Internal Revenue Code, the amounts in excess of the fair market value of Class "C" stock of the Springfield, Massachusetts and New Orleans, Louisiana Banks for Cooperatives which they were required to pay for such stock in order to be able to borrow from those Banks.[4]

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[3] Concluding that the Class "C" stock had no fair market value, the District Court thus allowed as deductions the entire amounts so paid by petitioner.

[4] While the Court of Claims found "considerable merit" in the reliance by the District Court in the instant case on a theory of deductible business expense under Section 162(a), nevertheless, the Court found that:

> "The more logical basis for the allowance of the claimed deduction in this case under all of the facts and circumstances is that the purchase price of the Class "C" stock (to the extent that such price exceeded the market value of such stock, as such value is conceded by plaintiff) was interest paid and deductible under § 163 of the Internal Revenue Code of 1954, particularly because the amount of such stock required to be purchased by law and by the loan agreements involved was measured by a percentage of the interest payable on plaintiff's outstanding loan obligations to the bank issuing the stock." 417 F.2d. at 1382.

The Fifth Circuit, in *Mississippi Chemical Corp.*, agreed

Thus, the Eighth Circuit has rendered a decision which conflicts with decisions of the Court of Claims and the Fifth Circuit in a case involving an important question of federal law which has not been, but should be, settled by this Court. The divergent results prevent uniform taxation of the thousands of cooperatives which borrow from Banks for Cooperatives and which are required as a condition of their loans to "purchase" at a price (par value) far in excess of fair market value Class "C" stock of the Banks from which they borrow. In these circumstances, review by this Court is plainly warranted.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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